

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1129 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MOHAN @ MAVJI @ TABLU

NATHUBHAI KHARVA KHAPANDI

Versus

STATE OF GUJARAT

Appearance:

MR.PRAVIN GONDALIA FOR MR YOGESH S LAKHANI for Petitioner

MR. GOHIL ASSTT PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 02/02/99

ORAL JUDGEMENT

#. In this petition under Article 226 of the Constitution of India, the prayer is to quash the show cause notice dated 23rd June, 1998 - Annexure-A, order of the externing authority - Annexrure B dated 29th August, 1998 and the order of appellate authority - Annexure-C dated 16th November, 1998.

#. The brief facts giving rise to this petition are that

a show cause notice under Section 59(1) of the Bombay Police Act was issued to the petitioner to show cause as to why he should not be externed from the districts of Junagadh, Porbandar, Amreli and Rajkot for a period of two years. Basis of this notice was registration of two criminal cases against the petitioner and the statements of two confidential witnesses besides the registration of a case under Sections 107 and 151 of the Code of Criminal Procedure. The other anti social activities of the petitioner were also considered by the externing authority.

#. The petitioner appeared and submitted his reply to the show cause notice and also examined five witnesses and tendered certificates of 27 persons in his favour. Considering the entire material, the externing authority passed the impugned order. An appeal was preferred against the order of the externing authority which was also dismissed by the appellate authority hence this writ petition.

#. Having heard the arguments of the learned counsel of the petitioner and the learned AGP, I find that the impugned order of the externing authority as well as the order of the appellate authority cannot be sustained for the following reasons.

#. The order of externment is always considered to be a preventive order and not a punitive order. The purpose of passing such order is that the person is prevented from carrying out his criminal and anti social activities in a particular district or number of districts or in a particular locality. If such preventive measures can be taken other way then the extreme remedy of externment should not have been taken. In the grounds of detention, it is mentioned that Chapter case No.51 of 1998 under Section 107 and 151 of Code of Criminal Procedure is already pending against the petitioner. This is also preventive action and if this action succeeds, the petitioner would be called upon to furnish bail bonds and surety bonds for keeping good behavior for period of 1 year. Since the case has not been decided, it cannot be said that the matter is over and the petitioner cannot be expected to file bail and surety bonds. The first registered case was of the year 1995 and the second case was of the year 1998. If these two cases were registered prior to the initiation of the proceedings under Section 107 and 151 of the Code of Criminal Procedure, there was hardly any reasons for taking extreme remedy of externing the petitioner from four districts. On this count, the impugned order of the externing authority which was

confirmed by the appellate authority cannot be sustained.

#. Another reasons is that general allegations regarding criminal and anti social activities of the petitioner have been made in the grounds of detention. The date, time and place where the petitioner committed such offences have not been disclosed in the grounds of detention. Merely by mentioning that an atmosphere of terror was created in the area of Bandar and Veraval city, it is not enough to give specific information about the place, where the petitioner was operative along with his gang. Moreover, during the period between the year 1995 to 1998, no registered criminal offence came into existence nor the two confidential witness stated that the petitioner committed these offences in which particular year. The date and time, was also not specified by the confidential witnesses. In these circumstances, non disclosure of the period, date and time of activities of the petitioner renders the show cause notice as well as the two orders invalid.

#. Only two cases were registered against the petitioner, and out of the two, one was in the year 1995 and the other in the year 1998. It cannot be said that the petitioner was involved in serious criminal activities due to which he could be externed. Moreover, the offences complained in the registered criminal cases were not of serious nature and the petitioner was already booked under the relevant sections of the IPC. The two confidential witnesses gave some statement against the petitioner but even extracts of these statements were not given in the show cause notice. What is mentioned in the show cause notice is that two confidential witnesses gave statement supporting the aforesaid activities of the petitioner. This is not sufficient disclosure of the facts and material on which the petitioner could have given an effective and satisfactory reply to the show cause notice. As such the petitioner was prevented from giving effective reply to the allegations made against him. This omission will also render the impugned order invalid so also the show cause notice.

#. The externing authority has not at all considered the statement of five witnesses examined by the petitioner nor has considered 27 certificates filed by the petitioner. However, the appellate authority has considered the above material. Consequently, on this ground the order of the externing authority cannot be quashed. The defect in the order of the externing authority was supplemented by the appellate authority.

#. On general allegations against the petitioner, he could not be externed from four districts on the pretext that in this developing age, since fast means of communication are available, the petitioner could have operated from Junagadh and remaining district. Not a single incident is disclosed either in the show cause notice or in the externment order that the petitioner ever committed any activity from the remaining districts. His externment from four districts can hardly be said to be legal and justified.

##. For the reasons stated above the order of the externing authority as well as of the appellate authority cannot be sustained. The writ petition therefore succeeds and is allowed. The order of externing authority Annexure-B and the order of the appellate authority Annexure-C are hereby quashed.

Dt: 2-2-1999 (D.C.Srivastava, J.)

*kailash